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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 760

FRANK BOGLE, ET AL.,

Petitioners,

JAKES FOUNDRY COMPANY,

Respondent

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

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v.

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Statement of the Case

Respondent and a union representing an appropriate unit of respondent's employees entered into a collective bargaining agreement which expired by its terms after the union gave the statutory 60-day notice. Negotiations for a new contract were rather extended, but ultimately failed to produce a new agreement. A number of the employees involved elected to strike and they thereupon established a peaceful picket line at respondent's place of business. Almost immediately the numerous common carriers which normally served respondent with carrier service, ceased furnishing such service. After repeated

requests for service were either ignored or denied, respondent filed suit in the Chancery Court of Davidson County, Tennessee against a number of common carriers by motor vehicle and also the Railway Express Agency, said suit seeking an injunction to prevent the continued discrimination against respondent by said carriers.

The Chancery Court issued such an injunction which was duly served and petitioners do not in any way claim lack of notice of said injunction.

The defendant carriers and certain of their employees continued in their failure to provide service and said carriers and the employees involved were duly cited for contempt. Prior to citation for contempt no responsive pleading was filed and no effort was made to question the validity of the injunction.

After being cited for contempt a number of the carriers and individuals filed pleas in abatement challenging the jurisdiction of the Court. Respondent demurred to said pleas and after due consideration thereof the Court sustained the demurrer. The individuals and carriers declined to plead further and respondent thereupon introduced proof in support of the contempt charges. Petitioners herein declined to offer any proof. The Chancery Court found both carriers and petitioners guilty of contempt and levied very nominal fines. Certain carriers and individuals continued in their refusal to furnish carrier service and a second petition for contempt was filed and the individuals and carriers were again found guilty of contempt and very small fines imposed. The total fines imposed against all of petitioners was Eighty ($80.00) Dollars.

With the exception of one individual all of the employees and certain of the carriers appealed the Chancellor's decision to the Tennessee Court of Appeals. That Court

affirmed the Chancellor and the entire opinion of the said Court is printed as Appendix "A" to the petition.

A petition for certiorari was timely filed to the Supreme Court of Tennessee and that Court denied the petition on December 11, 1959, *after* this Court had denied certiorari in the case of *McCrary* v. *Aladdin Industries* (4 L. Ed. 2d 104, 80 S. Ct. 117) on October 19, 1959.

No labor union and no member of any labor union is a party to this suit. The only relief sought was an injunction to require carriers to perform their duty of carriage. This injunction ran against defendants "and their agents and servants" according to equity practice.

Counter Statement of Questions Involved

1. Is unlawful discrimination by a common carrier prohibited or protected by the National Labor Relations Act so as to deprive a State Court of jurisdiction? Respondent insists the answer is "No".

2. Is a State Court deprived of jurisdiction to enforce the obligations of common carriers by any provision of the Interstate Commerce Act? Respondent insists the answer is "No".

Brief and Argument

I

> "Is unlawful discrimination by a common carrier prohibited or protected by the National Labor Relations Act so as to deprive a State Court of jurisdiction? Respondent insists the answer is 'No'.

The injunction ran against defendants "and their agents and representatives", according to equity practice. This form of injunction against corporate defendants is neces-

sary to enable the Court to enforce its writ. A corporation acts only through its officers, agents and employees, and it is only through them that its action can be restrained or compelled. 2 Daniell's Chancery Pleading and Practice, (6th Am. ed.) 1673; Gibson's Suits in Chancery, 3rd ed. sec. 834; *Toledo A.A. & N.M. Ry Co.* v. *Pennsylvania Co.*, 54 Fed. 730, 742, 19 LRA 387, 393.

> "An injunction not only binds parties defendant but also those identified with them in interest or subject to their control, and may issue against and be binding on the agents and employees of a party without the agents and representatives being made parties to the suit. In re Lannon, 166 U.S. 548, 17 S. Ct. 658, 41 L. Ed. 1110. Chase National Bank v. Norwalk, 291 U.S. 431, 54 S. Ct. 475, 78 L. Ed. 894, and Rule 65 (d) Federal Rules of Civil Procedure, 28 U.S.C.A." Baltimore & O. R. Co. v. Chicago River & Indiana R. Co., 170 F. (2d) 654, 659, Cert. denied 386 US 944, 93 L.Ed. 1101.

The injunction in this case was not directed to, nor did it command, any individual employees by name. Nor did it attempt to enforce specific performance of personal service by any of them. Nor did it interfere with the right to strike, or require any of them to work for carriers. It is only an order restraining them, if and when they do work for said carriers, from doing such work in a way contrary to the carriers' public duty, and from violating the rights of respondent and the order of the Court made to preserve such rights. *Toledo A.A. & R.M. Ry. Co.* v. *Pennsylvania Co.* Supra, 54 Fed. 730, 745, 19 LRA 387, 394.

Inasmuch as petitioners concede that this case is not distinguishable from the *Aladdin* case, respondent will not reply in detail to the reargument contained in the petition since the opinion of the Tennessee Court in that case (*Al-*

addin Industries v. *Associated Transports*, 323 SW 2d 222) so completely answers these arguments.

Respondent would only call to the Court's attention that the contractual right to refuse to handle "unfair goods" relied upon by petitioners is no longer available and should not arise in the future because the 1959 amendment to the Labor Management Relations Act (29 U.S.C.A. section 158 (e)) expressly prohibits such contracts.

II

> "Is a State Court deprived of jurisdiction to enforce the obligations of common carriers by any provision of the Interstate Commerce Act? Respondent insists the answer is 'No'".

The argument that the Interstate Commerce Act has deprived State Courts of jurisdiction is wholly without merit. Although petitioners quote in their Appendix "B" certain portions of U.S.C., section 316, it is significant to note that they failed to quote sub-section "j" which reads as follows:

> "Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith."

Section 22 of the Interstate Commerce Commission Act (Title 49 U.S.C.A., section 22) provides in part:

> "Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."

Section 317, sub-section "b", Title 49, U.S.C.A., which section is a part of chapter 8 of the Interstate Commerce Act dealing with motor carriers provides:

> "Provisions of Section 1(7) and 22 of this title shall apply to common carriers by motor vehicle subject to this chapter."

The right of a shipper to go directly to Court to compel carriers to perform service has existed for a long number of years and has been given express statutory as well as judicial sanction.

Section 316(j) expressly reserves all common law and statutory remedies not inconsistent with other remedies available under the Federal Act. The section naturally must mean that Congress recognized that other remedies already existed against some of the wrongs prohibited in the Federal Act and that these remedies were not abolished unless such remedy is inconsistent with the provisions of this Act. The shipper in this case wanted service, the remedy sought was to enforce service. Certainly the granting of this relief by State Courts cannot be said to be inconsistent with any provision of the Federal Act. (*T.I.M.E. vs. U.S.*, 359 U.S. 464, 3 L. Ed. 2d 952, 79 S. Ct. 904)

Conclusion

I

The decision of the State Court is not in conflict with any decision of this Court but is admittedly identical with a decision which this Court refused to disturb.

II

The Federal Motor Carrier Act has in no way deprived State Courts of jurisdiction to enforce service by common carriers but has expressly reserved such jurisdiction.

III

The question is very unlikely to arise in the future because Congress has now eliminated the provision in carrier labor contracts which tended to create this situation.

IV

The penalty complained of is only $80.00 and is therefore too trivial for this Court to consider.

The respondent respectfully insists that the petition be denied.

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